IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

WP(C).No. 28533 of 2007(V)

PETITIONER:

A. JOSE,
CHOTTUKUNNIL HOUSE, NATHIRIKKAL,
VELLIMONI P.O., KOLLAM DISTRICT.

BY ADV. SRI.P.J.MATHEW

RESPONDENTS:
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1. THE DEPUTY S.P. OF POLICE, MUVATTUPUZHA.

2. THE CIRCLE INSPECTOR OF POLICE,
KOTHAMANGALAM.

3. SECRETARY, INTUC,
KOTHAMANGALAM UNIT, KOTHAMANGALAM P.O.

4. SECRETARY, CITU,
KOTHAMANGALAM UNIT, KOTHAMANGALAM P.O.

5. SECRETARY, AITUC,
KOTHAMANGALAM UNIT, KOTHAMANGALAM P.O.

BY ADV. SRI.ALEXANDER JOSEPH-R3 & R4
GOVT. PLEADER SRI.P.A.SALIM.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WPC 28533/2007)

PETITIONER'S EXTS.

EXT.P1 - TRUE COPY OF THE NOTICE PUBLISHED BY THE VICAR OF THE CHURCH DATED 13.09.2007.

EXT.P2 - TRUE COPY OF THE LETTER DATED 24.09.2007 ISSUED BY THE VICAR OF THE CHURCH.

EXT.P3 - TRUECOPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 24.09.2007.

EXT.P4 - TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 24.09.2007.

RESPONDENTS' EXTS. NIL.

/TRUE COPY/

K.BALAKRISHNAN NAIR &

T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C) NO. 28533 OF 2007-V

Dated 28th September, 2007.

JUDGMENT

Balakrishnan Nair, J.

The petitioner is the proprietor of J.J.Maruthi Motorcycle Circus. He has brought various equipments used in the circus, including giant wheel, death well etc., to Kothamangalam, where he proposes to set up the camp. According to the petitioner, the members of respondents 3 to 5 are obstructing the unloading of the materials brought by him, saying that they should be permitted to do the work or at least they should be paid the wages, even if the work is done by his workmen. It is pointed out that the equipments are to be handled carefully. If any damage is caused, it will be difficult to fit them and use them for the purpose of the circus. There are 40 artists employed by the company and they are dependent on the income generated by the functioning of the circus. Against the obstruction caused by the workmen, the petitioner moved the police. But, the police did not

interfere. Therefore, this writ petition is filed, seeking the following relief:

> "(i) to issue a writ of mandamus or any other appropriate writ, direction or order directing the respondents 1 and 2 to afford adequate and effective police protection for the petitioner and his men for unloading and loading the circus materials and the conduct of the circus, from any sort of interference and obstruction from the part of respondents 3, 4 and 5 and their members."

2. The learned Government Pleader, upon instructions, submitted that respondents 3 and 4 have agreed not to cause any obstruction to the unloading of the equipments brought by the petitioner. The learned counsel for respondents 3 and 4 submitted that the area is a scheme covered area and the members of the unions represented by respondents 3 and 4 are attached to the local pool of the head load workers and therefore, they are entitled to do the loading and unloading work in that area. But, the petitioner is denying work to them and is trying to do the same using his own workmen. The same is impermissible, it is submitted.

3. The claim of the workmen for doing the loading and unloading work shall be considered and decided by the Assistant Labour Officer, Kothamangalam. As per the provisions of the Head load Workers Act, he is only empowered to conciliate in the matter. As a special case, he is authorised to take a decision on the claim of the workmen. The workmen shall produce a copy of this judgment and move the Assistant Labour

Officer. In that event, the said officer shall hear the petitioner and take a decision on the claim of the workmen. If it is found that the workmen attached to the pool are entitled to do the work, the petitioner shall pay the wages, which the workmen could have received had they done the unloading, to the Head load Workers Welfare Board, Kothamangalam. The Assistant Labour Officer shall take a decision before 5.10.2007, before the petitioner leaves the place. Both the parties shall appear before the Assistant Labour Officer on 1.10.2007 at 11 a.m.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/